

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Determination of Royalty Rates and Terms
for Transmission of Sound Recordings by
Satellite Radio and “Preexisting”
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR (2018–
2022) (Remand)

**DECLARATION AND CERTIFICATION OF MARGARET WHEELER-
FROTHINGHAM REGARDING RESTRICTED MATERIAL**

1. I am an attorney at Mayer Brown LLP, and am counsel for Music Choice in the above-captioned remand proceeding. I submit this declaration in support of Music Choice’s Brief Regarding Privilege Issues. I am fully familiar with the facts set forth in this declaration, and if called upon to testify could do so truthfully and competently.

2. Pursuant to the Copyright Royalty Judges’ Order dated June 15, 2016 (the “Protective Order”), Music Choice, through its undersigned counsel, respectfully submits this declaration concerning Protected Material, as that term is used and defined in the Protective Order.

3. This declaration is being submitted simultaneously with the public filing of Music Choice’s Brief Regarding Privilege Issues, the Declaration of Margaret Wheeler-Frothingham in Support of Music Choice’s Brief Regarding Privilege Issues, and accompanying exhibits.

4. I have reviewed Music Choice’s Brief Regarding Privilege Issues, the Declaration of Margaret Wheeler-Frothingham in Support of Music Choice’s Brief Regarding Privilege Issues, and accompanying exhibits submitted by Music Choice.

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5. As discussed below and after consultation with my client, I have determined that portions Music Choice's Brief Regarding Privilege Issues, and Exhibits A and B to the Declaration of Margaret Wheeler-Frothingham in Support of Music Choice's Brief Regarding Privilege Issues clearly meet the definition of "Protected Material." Specifically, as summarized below, the following documents and exhibits contain commercial and financial material that is proprietary, not known to the public and the disclosure of which would place Music Choice or another party to that material at a significant commercial disadvantage or would unfairly advantage competitors and other parties.

6. Music Choice's Brief Regarding Privilege Issues, and exhibits A and B to the Declaration of Margaret Wheeler-Frothingham in Support of Music Choice's Brief Regarding Privilege Issues contain confidential and commercially sensitive information regarding the terms of Music Choice's nondisclosure agreement with SoundExchange's accountants, and regarding SoundExchange's engagement letter with its accountants – all of which SoundExchange produced as "RESTRICTED." The information in both the brief and these exhibits is at a level of specificity that is not disclosed to the public; if it were disclosed, it would competitively disadvantage Music Choice of the other parties to whom the information pertains, while providing a competitive advantage to other parties in the industry.

7. All redacted materials designated "RESTRICTED" contains commercial or financial information that Music Choice has reasonably determined in good faith that, if disclosed, would either competitively disadvantage Music Choice and/or SoundExchange, provide a competitive advantage to another party, interfere with Music Choice or SoundExchange's ability to obtain like information in the future, or otherwise potentially violate the Protective Order.

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8. Attached hereto is a Redaction Log, as required by paragraph 4(c) of the Protective Order, identifying each redaction contained in Music Choice's Brief Regarding Privilege Issues and in Exhibits A and B to the Declaration of Margaret Wheeler-Frothingham in Support of Music Choice's Brief Regarding Privilege Issues, which are designated Restricted.

9. Within the Redaction Log, each listing of a redaction or Restricted document identifies the document, and the page and line number, of each redaction, and a brief description of the nature of the redacted Protected Material.

10. I am authorized to submit this declaration on behalf of Music Choice. I have reviewed the redactions set forth in the Redaction Log and to the best of my knowledge, information and belief, the redacted information meets the definition of Restricted Information contained in the Protective Order. At the time this declaration is made, good cause exists for the treatment of the information as Protected Material in order to prevent certain business and competitive harm that would result from the disclosure of such information while, at the same time, enabling Music Choice to provide the Copyright Royalty Judges with the most complete record possible on which to base their determination in this remand proceeding.

11. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: August 12, 2021
New York, New York


Margaret Wheeler-Frothingham (NY Bar No. 5281191)

Proof of Delivery

I hereby certify that on Thursday, August 12, 2021, I provided a true and correct copy of the Declaration and Certification of Margaret Wheeler-Frothingham Regarding Restricted Material to the following:

American Federation of Musicians of the United States and Canada, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Recording Industry Association of America, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Sirius XM, represented by Todd Larson, served via ESERVICE at todd.larson@weil.com

SoundExchange, Inc., represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

American Association of Independent Music ("A2IM"), represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

SAG-AFTRA, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Sony Music Entertainment, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Warner Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Universal Music Group, represented by Steven R. Englund, served via ESERVICE at senglund@jenner.com

Signed: /s/ Paul Fakler